



July 13, 2009

By E-Mail and Hand

Hon. Shira A. Scheindlin
United States District Judge
Southern District of New York
500 Pearl Street, Room 1620
New York, New York 10007

Re: *In re Methyl Tertiary Butyl Ether (MTBE) Products Liability Litigation*,
MDL No. 1358, Master File No. 1:00-1898 (SAS)
City of New York v. Amerada Hess, et al., 04 CV 3417 (SDNY)

Dear Judge Scheindlin:

The City writes in response to (1) ExxonMobil's ("Exxon") June 30, 2009 letter proposing a separate trial phase on its statute of limitations defense, and (2) Exxon's July 7, 2009 amendment of its Phase 1 witness list adding 35 new witnesses.

I. The Court Should Reject Exxon's Proposal for an "Interim" Statute of Limitations Phase

Having argued unsuccessfully that the City's claims are not yet ripe despite the undisputed presence of MTBE in the City's Station 6 wells, Exxon now seeks to add a new phase 1A to the trial to determine whether the City's Station 6 claims are time barred. Exxon's proposal will neither simplify nor reduce the time needed for trial. Nor would the determination Exxon seeks even dispose of the City's Station 6 claims. Any question about the timing of the City's injury belongs in Phase 3, when the parties will present evidence concerning the nature of MTBE.

This Court has repeatedly held that the question of when a well suffers injury is a fact specific question. *See In re MTBE Products Liability Litigation*, 593 F. Supp. 2d 549, 552 (S.D.N.Y. 2008), *In re MTBE Products Liability Litigation*, 2007 U.S. Dist. LEXIS 40484 *34-36 (S.D.N.Y. June 4, 2007). It is not sufficient simply for MTBE to be present in a well at low concentrations; rather Exxon must establish that the City knew that MTBE was present at a concentration sufficient to constitute an injury and that the City knew that MTBE at that concentration is harmful to drinking water. *In re MTBE Products Liability Litigation*, 2007 U.S. Dist. LEXIS 40484 *27 (S.D.N.Y. June 4, 2007); *see also In re MTBE Products Liability Litigation*, Docket #341, Opinion at 26 (S.D.N.Y. July 6, 2009).

The question of what level of MTBE causes harm requires evidence of the nature of MTBE and its impact on water quality. A jury could not reach an informed decision about whether a

specific concentration of MTBE in a well caused injury to the City before October 31, 2000, the three year limitations bar date, without a comprehensive understanding of MTBE. To present a full picture, the City would be entitled to offer evidence of what Exxon said and knew about the effects of MTBE on drinking water and the costs of addressing it when Exxon advocated for and decided to use MTBE in gasoline. The City would also be entitled to offer evidence concerning the health impacts of MTBE and consumer sensitivity to MTBE's taste and odor, and the evolving state of knowledge about both. And the City would be entitled to offer evidence of the treatment required to remove MTBE, what that treatment is required to achieve, and how much that treatment will cost. All of this evidence is inextricably intertwined with the City's liability case against Exxon, the focus of Phase 3.

The Court noted this precise problem with Exxon's proposal at the July 2, 2009 conference:

The Court: Mr. Sacripanti, you are saying that the injury occurred and they knew it before the bar date. How do you define that injury? Doesn't it depend on how much MTBE is in the water, whether that amount is what caused the injury? It is not as simple as they know about this substance and one molecule got in. We have to go further than that.

Mr Sacripanti: That is absolutely right.

The Court: Why isn't it resolved with all of the phase 3 issues? How can it be separated from all those issues?

Transcript of July 2, 2009 Pretrial Conference at 37:14-22.

Moreover, Exxon's statute of limitations argument is not dispositive and would therefore not shorten the trial. Even in the unlikely event that Exxon were somehow to succeed in convincing a jury that some of the Station 6 wells were injured before October 31, 2000, that still would not bar the City's claims either for other Station 6 wells, nor even for the wells the jury found injured before the three year bar date based on later releases of MTBE. *See In re MTBE Products Liability Litigation*, Docket #341, Opinion at 24-27 (S.D.N.Y. July 6, 2009) (recognizing right to assert claims for future injury). Nor would it affect any Navigation Law, injunctive, and equitable claims, all of which have six year limitation periods. *In re MTBE Products Liability Litigation*, 2007 U.S. Dist. LEXIS 40484 *13-17 (S.D.N.Y. June 4, 2007).

While Exxon may wish to keep evidence of its wrongdoing from the jury, the City is entitled to present its case. Aside from the impracticality of Exxon's proposal, delaying the liability phase of the trial by adding another preliminary phase is ultimately unfair to the City. The Court should reject Exxon's proposal.

II. Exxon's Amendment of its Phase 1 Witness List

On July 7, 2009, Exxon served an amended witness list that more than tripled the number of witnesses designated by Exxon for Phase 1 of the trial, bringing its total to 60.¹ The new witnesses include 22 individual board members and staff of the New York City Municipal Water Finance Authority ("NYW") and the New York City Water Board ("Water Board"), 3 additional employees of the City Department of Environmental Protection ("DEP"), 3 employees of one of the City's consultants on the Dependability Study, and 4 custodians of records for entities connected with NYW. Exxon offered no explanation for its amendment, and failed either to consult with the City or seek the Court's permission for this substantial increase in witnesses, as required by the Court's rules and the Joint Pre-Trial Order. When directed by Judge Hedges to provide a one sentence summary of each witness's proposed testimony, Exxon essentially conceded that it added all of the NYW and Water Board witnesses for discovery purposes, in a transparent attempt to overcome this Court's well-founded reluctance to allow Exxon to reopen discovery on matters about which it was long on notice. And Exxon still offers no acceptable explanation about why the DEP and City consultant witnesses were not on its original list and cites to no new information obtained since June 8, 2009, the date of its original submission, that justifies their addition at this late date. All these late-added witnesses should be stricken.

NYW and Water Board Witnesses (26 new witnesses)

Exxon added six out of the seven² board members of NYW (including three who serve ex-officio, including the Commissioner of the New York State Department of Environmental Conservation), and all nine officers of NYW. Exxon also added custodians of records for four of NYW's outside consultants: its bond counsel, rate consultants, and two financial advisors. Similarly, Exxon added 4 of the seven³ members of the Water Board and 3 of the five Water Board staff.⁴ When ordered by Judge Hedges to explain why the individuals were added to its witness list, Exxon responded only that "ExxonMobil has not had the opportunity to take discovery." Exxon repeated the same inadequate justification for each witness. See July 20, 2009 Letter from Stephen J. Riccardulli to Special Master Hedges, attached as Exhibit C. Notably, Exxon did not identify the subject matter of these witnesses' testimony, explain why 26 witnesses are necessary and how their testimony would differ, offer any acceptable justification for their late addition to Exxon's witness list, or explain how their testimony would be relevant to Phase 1.

¹ Copies of Exxon's original Phase 1 Witness List and Amended Phase 1 Witness List are attached as Exhibits A and B, respectively.

² The 7th board member is the DEP Acting Commissioner, who was on Exxon's original list.

³ A fifth member, the Chair of the Water Board, was on Exxon's original list.

⁴ A fourth staff member, the Executive Director, who is also the DEP Acting Commissioner, was on Exxon's original list.

As is apparent from its letter to Judge Hedges, Exxon's addition of these 26 new witnesses is nothing more than a thinly disguised continuation of its effort to reopen discovery and belatedly depose NYW and the Water Board, this time by threatening to substantially lengthen Phase 1 of the trial with repetitive and irrelevant witnesses if discovery is not allowed. The Court has twice deferred Exxon's request for immediate discovery of NYW and the Water Board. *See* Transcript of June 25, 2009 Pretrial Conference at 21:11-22:5, 42:6-47:2; Transcript of July 2, 2009 Pretrial Conference at 18:5-21:9 (copies of the relevant transcript pages are attached as Exhibit D). It should now deny any further discovery

Exxon's belated request to add NYW and the Water Board as parties is not a reason either for allowing Exxon to unnecessarily lengthen the trial with numerous new, irrelevant and repetitive witnesses or to obtain discovery. Exxon was well aware of the relationship between the City, NYW and the Water Board entities no later, and likely far earlier, than four months ago when it submitted the expert report of Susan Tierney. In her report, Dr. Tierney summarizes that relationship, describing NYW's primary purpose as "to finance the capital needs of the water and sewer system of New York City" and the Water Board's as "to set rates for New York City's water and sewer services sufficient to pay the costs of operating and financing systems that provide these utility services." Expert Report of Susan Tierney at 5-6. (A copy of Dr. Tierney's Expert Report (without the appendices) is attached as Exhibit E). Dr. Tierney also identifies the board membership of NYW. *Id.* Later in her report, Dr. Tierney discusses in detail the rate setting function of the Water Board and obligations of NYW, relying, among other documents, on the July 1, 1985 Financing Agreement between the City, NYW and the Water Board, one of the documents cited by Exxon to support purported "recent discovery" of the NYW and Water Board roles with respect to the City's water supply (attached as Exhibit F to the previously submitted June 23, 2009 Letter to the Court from Peter Sacripanti). Tierney Expert Report at 13-17. Indeed, the relationship among the three entities is a matter of public record; Dr. Tierney's report is rife with citations to the web pages of the City, NYW and the Water Board where the documents and relationships she describes (and which Exxon asserts were unknown) are available and fully explained. Having had ample opportunity to take discovery of NYW and the Water Board during the past five years had it wanted, Exxon should not be permitted to take that discovery less than three weeks before trial. Nor should Exxon be permitted to belatedly designate 26 additional witnesses to make up for its previous failure to conduct discovery or to force that discovery now.

Dependability Study Consultant (3 new witnesses)

Exxon has added three witnesses from Camp, Dresser & McKee ("CDM"), one of the two consultant firms that comprise the Dependability Study joint venture: Matthew Gamache, Gary Kroll, and Daniel O'Rourke. In its letter responding to Judge Hedges' order, Exxon asserted that it added these witnesses to authenticate documents and for their knowledge of the City wells to be used for Dependability. As Exxon had already designated a custodian of documents from CDM on its original exhibit list, adding individuals to authenticate documents is unnecessary. But in any event, the parties are stipulating as to the authenticity of documents produced by their consultants, making testimony from these witnesses doubly unnecessary. As to their knowledge of the City wells involved in the Dependability Study, Exxon has not offered any reason why these witnesses should be added now when they were not on Exxon's original list or explained how any testimony from these three witnesses on use of wells will not simply be repetitive.

Finally, Matthew Gamache, the one witness who Exxon deposed and who Exxon should therefore be knowledgeable about, is a groundwater flow and contaminant transport modeler; it is difficult to see how his testimony could be relevant to Phase 1.

City Department of Environmental Protection (3 new witnesses)

Exxon has also designated three new DEP witnesses:⁵ James Mueller, the Deputy Commissioner of the Bureau of Engineering, Design and Construction, DEP's capital construction bureau; Joseph Murin, the Assistant Commissioner for Budget; and Florence Mak, a staff engineer who works on the Dependability Study. All of these witnesses were known to Exxon long ago. In its letter to Judge Hedges, Exxon suggests that it added Mr. Mueller because he has knowledge of the Dependability Study. But Mr. Mueller has been Deputy Commissioner of the DEP Bureau responsible for the Dependability Study since well before June 8, 2009, when Exxon submitted its original Phase 1 witness list, and Exxon offers no justification for his belated designation. *See* Transcript of Deposition of Venetia Barnes, dated January 23, 2009 ("Barnes Tr."), at 169:2-13. Transcript of the Deposition of William Meakin, taken April 22, 2009 ("Meakin Tr."), at 164:24-165:13. (Copies of the cited deposition transcript pages are attached as Exhibit E.) Similarly, Exxon asserts that Ms. Mak is the new current head of Dependability Study at DEP. But as early as in April 2009, Ms. Mak was identified as responsible for the day-to-day oversight of Dependability Study, and Exxon has not asserted that her role has changed. Meakin Tr. at 36; *see also* Barnes Tr. at 168:18-169:1. Finally, while Exxon correctly notes that the City recently offered to make Mr. Murin available for a limited deposition on the changes in the Station 6 budget between the City's January 2009 and May 2009 proposed capital commitment plans, Exxon has neither suggested that Mr. Murin's budget responsibilities were previously unknown to it nor that his trial testimony would be limited to that recent budget modification. In fact, Exxon knew of Mr. Murin well before submission of its original witness list. *See, e.g.,* Meakin Tr. at 165:14-166:24.

In the absence of any acceptable justification for Exxon's wholesale flouting of the Court's rules, its amended Phase 1 witness list should be rejected.

Respectfully submitted,



Victor M. Sher

Cc: All Counsel (via LNFS)

⁵ Exxon identified two additional DEP witnesses (Kathryn Garcia and Thomas Tengelsen) who were already listed on the City's phase 1 witness list, purportedly to ensure that Exxon could call them if the City decided not to. As they were already on the City's witness list, the City does not object to Exxon's addition of these witnesses, but notes that given both parties' reservation of the right to call any witness listed by the other party, Exxon did not need to amend its witness list, but only to serve subpoenas – subpoenas which counsel for the City has willingly agreed to accept.

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In Re: Methyl Tertiary Butyl Ether (“MTBE”)
Products Liability Litigation

Master File C.A. No.
1:00-1898 (SAS)
MDL 1358

This Document Relates to:

City of New York v. Amerada Hess Corp., et al., Case Number 04-CIV-3417

DEFENDANT EXXON MOBIL CORPORATION’S PHASE I TRIAL WITNESS LIST

Defendants Exxon Mobil Corporation, ExxonMobil Chemical Company, Inc., Exxon Mobil Oil Corporation, and Mobil Corporation (collectively “ExxonMobil”), by and through their attorneys, MCDERMOTT WILL & EMERY LLP, hereby make the following pre-trial disclosure of witnesses. ExxonMobil reserves its right to supplement this disclosure and call additional witnesses up to and including at the time of trial. ExxonMobil further reserves its right to supplement this list in light of any decision or order that subsequently may be issued by the Court.

ExxonMobil expects to call the following witnesses during Phase I of trial:

Name	Address	Telephone
1. Barnes, Venetia	NYCDEP 96-05 Horace Harding Expressway, 4th Fl. Corona, NY 11368	(718) 595-4771
2. Bell, Marnie	Malcolm Pirnie 2701 Queens Plaza North Suite 800 Long Island City, NY 11101	(718) 446-0116

3. Cohen, Donald	Malcolm Pirnie 2701 Queens Plaza North Suite 800 Long Island City, NY 11101	(718) 446-0116
4. Dydland, John	NYCDEP 59-17 Junction Blvd. Flushing, NY 11373	(718) 353-0455
5. Lawitts, Steven W.	NYCDEP 59-17 Junction Boulevard 19th Floor Flushing, NY 11373	(718) 595 - 6600
6. Lloyd, Emily	Trinity Church Real Estate 75 Varick Street 2nd Floor New York, NY 10013	(212) 602-0867
7. Meakin, William	NYCDEP 96-05 Horace Hradng Expressway, 4th Fl. Corona, NY 11368	(718) 595-4771
8. Moss, Allen	New York City Water Board Dept of Env. Protection 59-17 Junction Boulevard, 8th Floor Flushing, NY 11373	
9. Rush, Paul V.	NYCDEP Bureau of Water Supply New York, NY	
10. Thornhill, Glen	84 Putnam Park Rd Bethel CT, 06801	(203) 798-7332
11. Tierney, Susan	Analysis Group 111 Huntington Avenue Tenth Floor Boston, MA 02199	(617)-425-8000
12. Yulinsky, William	NYCDEP 164-21 110 Ave. Jamaica, NY 11433	
13. "Custodian of Records" for Camp Dresser & McKee	One Cambridge Place 50 Hampshire Street Cambridge, MA 02139	(617) 452-6000

14. "Custodian of Records" for Hazen & Sawyer	498 Seventh Avenue 11th Floor New York, NY 10018	(212) 777-8400
15. "Custodian of Records" for Helen Neuhaus & Associates	460 Park Ave South Suite 202 New York, NY 10016	(212) 532-4175
16. "Custodian of Records" for Leggette, Brashears & Graham, Inc.	6 Arrow Road Ramsey, NJ 07446	(201) 818-0700
17. "Custodian of Records" for Malcolm Pirnie, Inc.	27-01 Queens Plaza North Suite 800 Long Island City, NY 11101	(718) 446-0116
18. "Custodian of Records" for New York City Municipal Water Finance Authority	75 Park Place 6th Floor New York, NY 10007	(212) 788-5889
19. "Custodian of Records" for New York City Water Board	59-17 Junction Boulevard 8th Floor Flushing, NY 11373	
20. "Custodian of Records" for New York State Department of Environmental Conservation	625 Broadway Albany, NY 12233-0001	
21. "Custodian of Records" for New York State Department of Health	Corning Tower Empire State Plaza Albany, NY 12237	
22. "Custodian of Records" for the New York State Assembly	Public Information Office Albany, NY	(518) 455-4218

23. "Custodian of Records" for the NYCDEP	59-17 Junction Boulevard 19th Floor Flushing, NY 11373	
24. "Custodian of Records" for the Regional Office of the NYSDEC	1 Hunter's Point Plaza 47-40 21st Street Long Island City, NY 11101	
25. "Custodian of Records" for United States EPA	Region 2 Office 290 Broadway New York, NY 10007	(212) 637-3000

In addition, if the need arises, ExxonMobil may call the following witnesses:

1. Any witness identified on Plaintiff's or any other party's witness list or called by Plaintiff or another party to testify at trial.
2. Any witnesses who may be necessary to establish the authenticity and admissibility of documents, to the extent that such issues are not resolved by agreement of the parties.

June 8, 2009
New York, New York

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EXHIBIT B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In Re: Methyl Tertiary Butyl Ether (“MTBE”)
Products Liability Litigation

Master File C.A. No.
1:00-1898 (SAS)
MDL 1358

This Document Relates to:

City of New York v. Amerada Hess Corp., et al., Case Number 04-CIV-3417

DEFENDANT EXXON MOBIL CORPORATION’S
AMENDED PHASE I TRIAL WITNESS LIST

Defendants Exxon Mobil Corporation, ExxonMobil Chemical Company, Inc., Exxon Mobil Oil Corporation, and Mobil Corporation (collectively “ExxonMobil”), by and through their attorneys, MCDERMOTT WILL & EMERY LLP, hereby make the following pre-trial disclosure of witnesses. ExxonMobil reserves its right to supplement this disclosure and call additional witnesses up to and including at the time of trial. ExxonMobil further reserves its right to supplement this list in light of any decision or order that subsequently may be issued by the Court.

ExxonMobil expects to call the following witnesses during Phase I of trial:

Name	Address	Telephone
1. Anders, Alan L.	NYC Municipal Water Finance Authority 75 Park Place, 6th Floor New York, NY 10007	(212) 788-5889
2. Balducci, Robert L.	NYC Municipal Water Finance Authority 75 Park Place, 6th Floor New York, NY 10007	(212) 788-5889

3. Barnes, Venetia	NYCDEP 96-05 Horace Harding Expressway, 4th Fl. Corona, NY 11368	(718) 595-4771
4. Bell, Marnie	Malcolm Pirnie 2701 Queens Plaza North Suite 800 Long Island City, NY 11101	(718) 446-0116
5. Capoccia, Donald	NYC Water Board 59-17 Junction Blvd., 8th Fl. Flushing, NY 11373	(718) 595-3586
6. Cohen, Donald	Malcolm Pirnie 2701 Queens Plaza North Suite 800 Long Island City, NY 11101	(718) 446-0116
7. Davis, Dawn S.	NYC Water Board 59-17 Junction Blvd., 8th Fl. Flushing, NY 11373	(718) 595-3586
8. Dydland, John	NYCDEP 59-17 Junction Blvd. Flushing, NY 11373	(718) 353-0455
9. Emilio, Carmelo	NYC Water Board 59-17 Junction Blvd., 8th Fl. Flushing, NY 11373	(718) 595-3586
10. Gamache, Mathew	CDM One Cambridge Place 50 Hampshire Street Cambridge, MA 02139	(617) 452-6000
11. Garcia, Kathryn	NYC Dept. of Environmental Protection 59-17 Junction Boulevard Flushing, NY 11373	(718) 595-6278
12. Grannis, Alexander B.	NYC Municipal Water Finance Authority 75 Park Place, 6th Floor New York, NY 10007	(212) 788-5889
13. Henning, Marjorie E.	NYC Municipal Water Finance Authority 75 Park Place, 6th Floor New York, NY 10007	(212) 788-5889

14. Hill, Arthur B.	NYC Municipal Water Finance Authority 75 Park Place, 6th Floor New York, NY 10007	(212) 788-5889
15. Howell, Amaziah	NYC Water Board 59-17 Junction Blvd., 8th Fl. Flushing, NY 11373	(718) 595-3586
16. Kenny, Peter .	NYC Municipal Water Finance Authority 75 Park Place, 6th Floor New York, NY 10007	(212) 788-5889
17. Kroll, Gary	CDM 1375 Broadway, Suite 1401 New York, NY 10018	(212) 221-9462
18. Kusterbeck, William	NYC Water Board 59-17 Junction Blvd., 8th Fl. Flushing, NY 11373	(718) 595-3586
19. Lawitts, Steven W.	NYCDEP 59-17 Junction Boulevard 19th Floor Flushing, NY 11373	(718) 595 - 6600
20. Levine, Michele Mark	NYC Municipal Water Finance Authority 75 Park Place, 6th Floor New York, NY 10007	(212) 788-5889
21. Lloyd, Emily	Trinity Church Real Estate 75 Varick Street 2nd Floor New York, NY 10013	(212) 602-0867
22. Mak, Florence	NYCDEP 96-05 Horace Harding Expressway Corona, NY 11368	(718) 595-5491
23. Meakin, William	NYCDEP 96-05 Horace Hradng Expressway, 4th Fl. Corona, NY 11368	(718) 595-4771
24. Moncure Jr., Albert F.	NYC Water Board 59-17 Junction Blvd., 8th Fl. Flushing, NY 11373	(718) 595-3586

25. Moran, Eileen T.	NYC Municipal Water Finance Authority 75 Park Place, 6th Floor New York, NY 10007	(212) 788-5889
26. Moss, Alan	New York City Water Board Dept of Env. Protection 59-17 Junction Boulevard, 8th Floor Flushing, NY 11373	(718) 595-3586
27. Mueller, James	NYC Department of Environmental Protection New York, NY	(718)595-5973
28. Murin, Joseph	NYC Department of Environmental Protection New York, NY	(718) 595-6936
29. Orlando, Raymond	NYC Municipal Water Finance Authority 75 Park Place, 6th Floor New York, NY 10007	(212) 788-5889
30. O'Rourke, Daniel	CDM (Watershed Division) Raritan Plaza I, Raritan Center Edison, NJ 08818	
31. Page, Mark	NYC Municipal Water Finance Authority 75 Park Place, 6th Floor New York, NY 10007	(212) 788-5889
32. Paolicelli, Thomas G.	NYC Municipal Water Finance Authority 75 Park Place, 6th Floor New York, NY 10007	(212) 788-5889
33. Patel, Mehul	NYC Water Board 59-17 Junction Blvd., 8th Fl. Flushing, NY 11373	(718) 595-3586
34. Rush, Paul V.	NYCDEP Bureau of Water Supply New York, NY	(718) 999-2022
35. Shaw, Marc V.	NYC Municipal Water Finance Authority 75 Park Place, 6th Floor New York, NY 10007	(212) 788-5889
36. Starck, Martha E.	NYC Municipal Water Finance Authority 75 Park Place, 6th Floor New York, NY 10007	(212) 788-5889

37. Tengelsen, Thomas	New York City Department of Environmental Protection 164-21 110 Avenue Jamaica, New York 11433	
38. Thornhill, Glen	84 Putnam Park Rd Bethel CT, 06801	(203) 798-7332
39. Tierney, Susan	Analysis Group 111 Huntington Avenue Tenth Floor Boston, MA 02199	(617)-425-8000
40. Ulrey, Prescott D.	NYC Municipal Water Finance Authority 75 Park Place, 6th Floor New York, NY 10007	(212) 788-5889
41. Werner, Jeffrey M.	NYC Municipal Water Finance Authority 75 Park Place, 6th Floor New York, NY 10007	(212) 788-5889
42. Yulinsky, William	NYCDEP 164-21 110 Ave. Jamaica, NY 11433	(718) 595-5272
43. "Custodian of Records" for Amawalk Consulting Group LLC	26 Broadway, #761 New York, NY 10004-1703	(212) 361-0050
44. "Custodian of Records" for Camp Dresser & McKee	One Cambridge Place 50 Hampshire Street Cambridge, MA 02139	(617) 452-6000
45. "Custodian of Records" for Hazen & Sawyer	498 Seventh Avenue 11th Floor New York, NY 10018	(212) 777-8400
46. "Custodian of Records" for Helen Neuhaus & Associates	460 Park Ave South Suite 202 New York, NY 10016	(212) 532-4175
47. "Custodian of Records" for Lamont Financial Services	201 Willowbrook Blvd, 5th Floor Wayne, NJ 07470	(973) 785-8900

Corporation		
48. "Custodian of Records" for Leggette, Brashears & Graham, Inc.	6 Arrow Road Ramsey, NJ 07446	(201) 818-0700
49. "Custodian of Records" for Malcolm Pirnie, Inc.	27-01 Queens Plaza North Suite 800 Long Island City, NY 11101	(718) 446-0116
50. "Custodian of Records" for Metcalf & Eddy of New York, Inc./AECOM	605 Third Avenue New York, NY 10158	(212) 973-2900
51. "Custodian of Records" for New York City Municipal Water Finance Authority	75 Park Place 6th Floor New York, NY 10007	(212) 788-5889
52. "Custodian of Records" for New York City Water Board	59-17 Junction Boulevard 8th Floor Flushing, NY 11373	
53. "Custodian of Records" for New York State Department of Environmental Conservation	625 Broadway Albany, NY 12233-0001	
54. "Custodian of Records" for New York State Department of Health	Corning Tower Empire State Plaza Albany, NY 12237	
55. "Custodian of Records" for the New York State Assembly	Public Information Office Albany, NY	(518) 455-4218
56. "Custodian of Records" for the	59-17 Junction Boulevard 19th Floor	

NYCDEP	Flushing, NY 11373	
57. "Custodian of Records" for Orrick, Herrington & Sutcliffe LLP	666 Fifth Avenue New York, NY 10103-0001	(212)506-5000
58. "Custodian of Records" for the Regional Office of the NYSDEC	1 Hunter's Point Plaza 47-40 21st Street Long Island City, NY 11101	
59. "Custodian of Records" for Ramirez & Co., Inc.	61 Broadway, Suite 2924 New York, New York 10006	(800) 888-4086
60. "Custodian of Records" for United States EPA	Region 2 Office 290 Broadway New York, NY 10007	(212) 637-3000

In addition, if the need arises, ExxonMobil may call the following witnesses:

1. Any witness identified on Plaintiff's or any other party's witness list or called by Plaintiff or another party to testify at trial.
2. Any witnesses who may be necessary to establish the authenticity and admissibility of documents, to the extent that such issues are not resolved by agreement of the parties.

July 7, 2009
New York, New York

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EXHIBIT C

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July 10, 2009

VIA ELECTRONIC MAIL

Special Master Ronald J. Hedges
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Re: Master File C.A. No. 1:00-1898 (SAS), M21-88, MDL No. 1358
City of New York v. Amerada Hess Corp, et al.
ExxonMobil's Amended Phase I Witness List

Dear Special Master Hedges:

As per your directive at during the July 9 teleconference, Exxon Mobil Corporation (“ExxonMobil”) respectfully submits the following identification of additional witnesses along with a one-sentence description as to why each witness was added to ExxonMobil’s Phase I witness list.¹

1. Alan Anders – CEO of the NYC Municipal Water Finance Authority (“MWFA”), a recently joined Rule 19 necessary party, of which ExxonMobil has not had the opportunity to take discovery.
2. Robert Balducci – Assistant Comptroller of the MWFA, a recently joined Rule 19 necessary party, of which ExxonMobil has not had the opportunity to take discovery.
3. Donald Capoccia – Board Member of the New York City Water Board (“Water Board.”), a recently joined Rule 19 necessary party, of which ExxonMobil has not had the opportunity to take discovery.
4. Dawn S. Davis – Board Member of the Water Board, a recently joined Rule 19 necessary party, of which ExxonMobil has not had the opportunity to take discovery.

¹ As previously noted, ExxonMobil respectfully submits that this issue be resolved by the Court as it relates to other issues before the Court regarding ExxonMobil’s ability to take discovery from Plaintiffs. Notwithstanding ExxonMobil’s objection, we submit this letter in compliance with your directive.

5. Carmelo Emilio – Deputy Treasurer of the Water Board, a recently joined Rule 19 necessary party, of which ExxonMobil has not had the opportunity to take discovery.
6. Matthew Gamache – 30(b)(6) witness from CDM (NYC consultant on dependability). Knowledge as to wells to be used for Dependability and to authenticate documents regarding same.
7. Kathryn Garcia – New York City Department of Environmental Protection Chief of Staff. Identified on Plaintiff's Phase I list; added to ExxonMobil's Phase I witness list to ensure her testimony should the City decide not to call her at trial.
8. Alexander Grannis – Member of the Board of the MWFA, a recently joined Rule 19 necessary party, of which ExxonMobil has not had the opportunity to take discovery.
9. Marjorie E. Henning – Secretary of the MWFA, a recently joined Rule 19 necessary party, of which ExxonMobil has not had the opportunity to take discovery.
10. Arthur B. Hill – Board Member of the MWFA, a recently joined Rule 19 necessary party, of which ExxonMobil has not had the opportunity to take discovery.
11. Amaziah Howell – Board Member of Water Board, a recently joined Rule 19 necessary party, of which ExxonMobil has not had the opportunity to take discovery.
12. Peter Kenny – Board Member of the MWFA, a recently joined Rule 19 necessary party, of which ExxonMobil has not had the opportunity to take discovery.
13. Gary Kroll – 30(b)(6) witness from CDM (NYC consultant on dependability). Knowledge as to wells to be used for Dependability and to authenticate documents regarding same.
14. William Kusterbeck – Treasurer of Water Board, a recently joined Rule 19 necessary party, of which ExxonMobil has not had the opportunity to take discovery.
15. Michele Mark Levine – Comptroller of the MWFA, a recently joined Rule 19 necessary party, of which ExxonMobil has not had the opportunity to take discovery.

16. Florence Mak – Employee within the DEP. Replaced William Meakin and is current head of Dependability project.
17. Albert F. Moncure, Jr. – Secretary of the Water Board, a recently joined Rule 19 necessary party, of which ExxonMobil has not had the opportunity to take discovery.
18. Eileen T. Moran – Deputy Comptroller of the MWFA, a recently joined Rule 19 necessary party, of which ExxonMobil has not had the opportunity to take discovery.
19. James Mueller – Director of Facilities Planning and Design for the Bureau of Engineering Design and Construction, which oversees the Dependability Project. Knowledge as to City's intentions regarding the Dependability program.
20. Joseph Murin – Assistant Commissioner of Budget for Department of Environmental Protection. Identified on June 29, 2009 (after deadline for Phase I witness lists) as the City's 30(b)(6) witness for the deposition ordered by the Court on changes to Station 6 funding in City's 2009 budget.
21. Raymond Orlando – Manager of Investor Relations for the MWFA, a recently joined Rule 19 necessary party, of which ExxonMobil has not had the opportunity to take discovery.
22. Daniel O'Rourke – 30(b)(6) witness from CDM (NYC consultant on dependability). Knowledge as to wells to be used for Dependability and to authenticate documents regarding same.
23. Mark Page – former Board Member of the MWFA, a recently joined Rule 19 necessary party, of which ExxonMobil has not had the opportunity to take discovery.
24. Thomas Paolicelli – Executive Director of the MWFA, a recently joined Rule 19 necessary party, of which ExxonMobil has not had the opportunity to take discovery.
25. Mehul Patel - Board Member of the Water Board, a recently joined Rule 19 necessary party, of which ExxonMobil has not had the opportunity to take discovery.
26. Marc V. Shaw – Board Member of the MWFA, a recently joined Rule 19 necessary party, of which ExxonMobil has not had the opportunity to take discovery.

27. Martha E. Starck – Board Member of the MWFA, a recently joined Rule 19 necessary party, of which ExxonMobil has not had the opportunity to take discovery.
28. Thomas Tengelsen - Employee of both the former Jamaica Water Supply Company and City of New York DEP. Identified both on Defendant's original witness list and on Plaintiff's Phase I list to testify as to numerous topics, including the City's knowledge and subsequent actions regarding MTBE detections in City of New York wells.
29. Prescott D. Ulrey – Assistant Secretary of the MWFA, a recently joined Rule 19 necessary party, of which ExxonMobil has not had the opportunity to take discovery.
30. Jeffrey M. Werner – Assistant Secretary of the MWFA, a recently joined Rule 19 necessary party, of which ExxonMobil has not had the opportunity to take discovery.

Respectfully submitted,

Stephen J. Riccardulli

Stephen J. Riccardulli

cc: Daniel Greene, Esq.
Nick Campins, Esq.

EXHIBIT D

96PFMTBC

1 UNITED STATES DISTRICT COURT
1 SOUTHERN DISTRICT OF NEW YORK

2 -----x

2

3 IN RE: MTBE, et al. 00 MDL 1358 (SAS)

3 -----x

4

New York, N.Y.

4

June 25, 2009

5

5:30 p.m.

5

6 Before:

6

7

HON. SHIRA A. SCHEINDLIN,

7

8

District Judge

8

9

APPEARANCES

9

10 MICHAEL A. CARDOZO

10 Corporation Counsel of the City of New York

11 Attorneys for City Plaintiffs

11 BY SUSAN E. AMRON

12 WILLIAM PLACHE

12 JOSHUA STEIN

13 -and-

14 SHER LEFF LLP

14 BY: VICTOR M. SHER

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16 GREENBERG GLUSKER

16 Attorneys for Plaintiffs

17 BY: ROBERT S. CHAPMAN

17

18 MCDERMOTT, WILL & EMERY

18 Attorneys for Defendant Exxon Mobil

19 BY: PETER JOHN SACRIPANTI

19 JAMES PARDO

20 WILLIAM STACK

20 STEPHEN RICCARDULLI

21 JENNIFER KALNINS TEMPLE

21

22

23

24

25

11 MR. SACRIPANTI: Well, I'd like to take the deposition
12 of those people, and I'm happy to do that. I don't know if
13 they're -- I don't know if it's untimely. I don't know if
14 there's relation back. I can't get into that until they
15 substitute the Water Board.

16 THE COURT: Not substitute, I think they would add as
17 a party plaintiff.

18 MR. SACRIPANTI: I'd like to take some discovery.
19 Your Honor, we don't want to delay the trial. We'll do this in
20 as compressed time as -- if they're going to add the Water
21 Board and the Water Authority, they can do that, we'll take
22 these depositions. If we think there's other issues, we'll
23 come back to the Court. The point is, they're the right
24 parties, they should be in this lawsuit. If we can take the
25 deposition and figure out, because I'm not an expert on this.

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1 The City apparently did not explain it, frankly, because

2 they're not jumping up and down telling me I'm wrong --

3 THE COURT: They don't want to interrupt you because

4 they're courteous lawyers, and when I call on them they'll be

5 heard.

6 MR. SACRIPANTI: I believe they are.

7 THE COURT: Go ahead.

8 MR. SACRIPANTI: I guess, Mr. Riccardulli reminds me

9 the discovery, if we take the depositions, if the City is going

10 to add them, we'd like to argue whether they're necessary

11 parties or not. I admit as I sit here today, I don't know all

12 about this because I know what I know from doing the research,

13 I'm not an expert in it, but I know clearly based on everything

14 I've seen every dime gets reimbursed, every capital

15 expenditure, and that's what this case is really about, your

16 Honor. It's not about the 900,000 plus interest that the City

17 has claimed. It's about this capital expenditure for Station 6

18 for whatever the costs might be, and that's a future damage and

19 they can't spend that money, they can't do it unless the Water

20 Board says you shall do that. And we'd like to do that through

21 discovery as well.

22

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MR. SACRIPANTI: I have a request. I would like
7 discovery of the Water Board and the Water Finance Authority so
8 we can --

9 THE COURT: According to the City's attorney a few
10 minutes ago you deposed both in October.

11 MR. SACRIPANTI: Oh, no, ma'am. One of the lawyers in
12 the MTBE multidistrict case served a subpoena asking for MTBE
13 documents. There was never an answer by the Water Board.
14 Ms. Amron wrote back saying they have no documents.

15 THE COURT: I see. So there was no deposition?

16 MR. SACRIPANTI: No, ma'am, and I would request an
17 immediate deposition of these people to see whether, who has
18 the rights here, because it's lawyers getting up in court
19 interpreting documents.

20 THE COURT: It's worse yet to have them interpret it.
21 You already heard Ms. Amron saying they don't think they own
22 the well. You really want their perception? It's a legal
23 issue. That's why I looked to the New York Court of Appeals
24 for the answer. Some 30(b)(6) person from the Water Board is
25 less critical on this probably than any of us sitting here.

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1 We're lawyers. If a person says, gee, I don't think we own
2 this, does that help you?

3 MR. SACRIPANTI: I think if somebody says we do and we
4 are involved and they can't build capital projects unless we
5 say so --

6 THE COURT: That would be directly contrary to what
7 we've already heard.

8 MR. SACRIPANTI: I would like the opportunity. If
9 this had been disclosed to us, we would have taken this
10 deposition.

11 THE COURT: I'm sure.

12 MR. SACRIPANTI: I would like the deposition at least
13 of the Water Board and of the Finance Authority and maybe
14 they'll say it and maybe they won't, I don't know, but sitting
15 here in Court, we're at least I would respectfully submit
16 entitled to that and I will end on that.

17 MS. AMRON: Your Honor, the Water Board and the Water
18 Authority and the relationship between them have been known, I
19 mean, it's public to begin with, but even aside from the fact
20 that it is easily discovered, as Mr. Sacripanti was able to do,
21 their own expert explained the relationship between the Water
22 Board, the Water Authority and the City in an expert report
23 that was submitted months ago.

24 THE COURT: What report was that?

25 MS. AMRON: That's the report of Susan Tierney, who is

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1 one of the defense experts, and she was talking about the
2 relationship in terms of the rates and whether the rates should
3 be raised. They've known about this for a long time, and in
4 fact, the discovery last year were document subpoenas and we
5 spoke to the respective agencies and they had nothing --

6 THE COURT: Right, but what they requested at the time
7 was MTBE-related documents. That's quite different than do you
8 have the final approval right before a project is funded. That
9 seems to be the only question worth asking, so it may be a
10 five-minute deposition, but somehow I doubt it.

11 MS. AMRON: I doubt it, too. They've known about
12 these entities for a long time.

13 THE COURT: So you think they've laid out and raised
14 it on the eve of trial.

15 MS. AMRON: Yes. And as Mr. Sacripanti said last week
16 when we were trying to talk about authenticating documents
17 there's a lot of other work to be done to get ready for trial
18 other than in his case authenticating documents and doing
19 depositions. What we'd like to propose if this is a concern is
20 that we provide a declaration from each of the entities --

21 THE COURT: To answer the question that Mr. Sacripanti
22 is particularly interested in is if the affiant says we do or
23 do not have more than the authority, the obligation to approve
24 capital projects before they're undertaken.

25 MS. AMRON: Yes, and we will get those declarations,

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1 and if they say yes, we'll discuss that, and if they say no,
2 that should be the end of it.

3 MR. SACRIPANTI: Well, your Honor, not subject to
4 examination, I must say an expert that we retained did say they
5 raise rates this way. Never said who had ownership. This is
6 about who has ownership.

7 THE COURT: I understand. Look, my guess is they both
8 have ownership, that's what the Court of Appeals was telling
9 us. You started out by saying it. You talked about a
10 reversionary interest. That means both entities have an
11 ownership interest.

12 MR. SACRIPANTI: Oh, I agree.

13 THE COURT: If you agree, what's the problem?

14 MR. SACRIPANTI: Because under the agreements, your
15 Honor, they can't build a capital project --

16 THE COURT: You keep saying that. That's why she
17 wants to put a declaration in.

18 MR. SACRIPANTI: I would like an opportunity to
19 question.

20 THE COURT: Why don't you see what the declaration is?
21 I am prepared to take up both suggestions. But we have to move
22 fast. We have a trial date of July 20. I am told the total
23 trial would last three and a half months. I'm counting on
24 that. I want it to end November. If I'm going to be sitting
25 here for three months, I want it to end November 1. That's why

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1 I want it to begin.

2 Can you get the declarations in by close of business
3 Monday? That's all it's going to say. You get in touch with
4 who you need and write it up. You won't get ahold of anybody
5 tonight, God forbid a City worker other than you and
6 Mr. Plache, I don't think you'll find another City employee
7 working, but try tomorrow, try early. Don't try to call them
8 at 2:00, call them at 9:00. Try to get a declaration, then
9 we'll see.

10 Depending on what the declaration says, I may be open
11 to a quick deposition and try to pin this thing down and not
12 waste three and a half months on trial and then hear that
13 exactly what Mr. Sacripanti is worried about could happen,
14 namely, recover -- I'll make up a nice low number -- recover a
15 million dollars from Exxon, then you put it in the budget and
16 you do the project, and the Water Finance Authority reimburses
17 and says, good, now I'm going to go after Exxon, I had to spend
18 out that money reimbursing you because of them. Exxon says,
19 wait a minute, I thought I was tried, there was a verdict and I
20 thought I paid. Now another entity is coming after me? That's
21 another problem right there.

22 Because let's say you get this million dollars from
23 Exxon. Do you have to spend it to reimburse yourself for the
24 project or can it go into the general operating budget for the
25 City of New York such that you're still going to get reimbursed

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- 1 from the Water Authority or whatever it's called, the Finance
- 2 Authority and they're going to look to Exxon again?
- 3

972UMTBC

1 UNITED STATES DISTRICT COURT
1 SOUTHERN DISTRICT OF NEW YORK

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3 IN RE: METHYL TERTIARY BUTYL 00 MDL 1358
3 ETHER ("MTBE") PRODUCTS Master File C.A.
4 LIABILITY LITIGATION No. 1:00-1898(SAS)

4
5 -----x

5
6 July 2, 2009
6 12:15 p.m.

7
7 Before:

8
8 HON. SHIRA A. SCHEINDLIN

9
9 District Judge

10
10 APPEARANCES

11
11
12 MICHAEL A. CARDOZO
12 Corporation Counsel of the
13 City of New York
13 Attorney for Plaintiff

14 BY: SUSAN E. AMRON

14 WILLIAM PLACHE

15 -and-

15 SHER LEFF LLP

16 BY: VICTOR M. SHER

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17 GREENBERG GLUSKER

17 BY: ROBERT S. CHAPMAN

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18 McDERMOTT, WILL & EMERY

19 Attorneys for Defendant Exxon Mobil Corp

19 BY: PETER JOHN SACRIPANTI

20 JAMES PARDO

20 JENNIFER KALNINS TEMPLE

21 STEPHEN J. RICCARDULLI

21

22

23 ALSO PRESENT

23 RONALD J. HEDGES, Special Master

5 THE COURT: While you are doing that, you may want to
6 take a look at Rule 19(a)(2) which is joinder by court order.
7 The Court can simply order, which would save you the trouble of
8 the September meeting. If it is really the wise thing to do, I
9 will just order it and add their name and be done with it
10 because I think it is name only. Once they are added, the
11 lawyers don't change, the issues don't change, nothing much
12 changes, but their claim is extinguished -- if they have any
13 claims, they are extinguished. They are here. They are party
14 plaintiffs.

15 MR. SHER: Let me have the conversation.

16 THE COURT: What is it, Mr. Sacripanti?

17 MR. SACRIPANTI: I was going to say, we are going to
18 ask for some discovery.

19 THE COURT: I know you are going to ask, but I may not
20 give. You had some discovery. You had affidavits from these
21 people. You had the exhibits attached. And you have known
22 about the water board and the water authority for the longest
23 time. These board are not new to you. You didn't know there
24 was a water authority? You didn't know there was a finance
25 board?

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1 MR. SACRIPANTI: Your Honor, to be fair, please, we
 2 did not know of this arrangement. There were no documents
 3 revealed to us. Every question we asked in deposition ended
 4 with OMB, the office of management and budget in the City. We
 5 now have for the first time have their approved list, what
 6 projects they are paying on, what they are not paying on.
 7 These open issues as to --

8 THE COURT: I am not going to use it as an excuse to
 9 drag it out. Even if I gave you a dep, you could do it by the
 10 20th of July. Today is the 2nd. So don't worry about it.
 11

* * *

18 MR. SHER: Your Honor, we do not oppose an order from
 19 your Honor joining these two entities to the litigation as your
 20 Honor deems appropriate. We obviously oppose a continuance.
 21 Moreover, with respect to discovery, we oppose any
 22 further discovery. And the reasons are a combination of the
 23 representations that have been made in the declarations that
 24 were submitted in connection with this particular dispute.
 25 But more importantly, defendants' expert, Dr. Tierney,

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1 in March submitted a report that went into great detail about
2 the relationship between the board, the authority and the City
3 and capital projects and all of these things. That was well
4 before the close of discovery, and there was just no follow-up
5 on it.

6 We are -- as your Honor, keeps reminding us, as we are
7 very well aware -- imminent to trial and think discovery on
8 these issues is inappropriate.

9 MR. SACRIPANTI: If I may respond?

10 We are pleased that the parties will be joined.
11 Ms. Tierney's report did not go into the financing and
12 ownership and leasing issues at all. There was no indication
13 in that report. I believe the last time that we were here or
14 the time before, we either showed the Court that or read from
15 that report.

16 We would ask that we would have a deposition. And we
17 agree, we are ready to go to trial, but we need that deposition
18 before we go to trial.

19 THE COURT: Why do you need it before you go to trial?
20 What issue does it relate to in phase 1?

21 MR. SACRIPANTI: It relates to in phase 1 whether or
22 not the City has been reimbursed for their claim.

23 THE COURT: They have been reimbursed. You said that
24 the proof is there. They will let you know if they have read
25 the code right. Let's assume they have been reimbursed. The

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1 party who has laid out the money is now a plaintiff in this
2 case.

3 MR. SACRIPANTI: That party also may have views on
4 whether or not to construct Station 6 which is at issue here.

5 THE COURT: I have no idea, but if you wanted to find
6 that out, you could have deposed them. You knew of their
7 existence. We had a discovery schedule. In any event, if I
8 gave you a deposition, I don't understand why it has to be done
9 before we commence the trial.

10 MR. SACRIPANTI: Your Honor, we can commence the trial
11 as scheduled, and just give us the opportunity to depose and we
12 will subpoena them to trial.

13 THE COURT: You won't have to subpoena them, they are
14 a party. There may be individuals.

15 MR. SACRIPANTI: Well, the executive director.

16 We would also like just if they could produce to us
17 the iterations of this attachment A which every year focused in
18 on what the approved projects were. There is some discovery
19 that the City has had that has been in possession of this a
20 very long time. It has not been produced. Every budget, I
21 think, stops at OMB -- never goes beyond, never says water
22 board, finance authority, none of this stuff. We would like to
23 see those documents before we go to trial.

24

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18 THE COURT: Then the City is directed to tell these
 19 entities that they need to find the documents that would show
 20 any payments for Station 6 from '96 on, show the reimbursement
 21 of any payments from '96 on, and they need to do that promptly.

22 As I said earlier, today is July 2. That has not
 23 changed, so they need to produce it no later than July 10.
 24 They need to look into their records and find any records of
 25 payment, for any Station 6 projects, that's all. Any Station 6

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